IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 25.09.2006

CORAM:

THE HON'BLE MR. JUSTICE P.JYOTHIMANI

Writ Petition No.18055 of 1998

Y.Venkatrayulu ... Petitioner

Vs.

1. The General Manager,
Reserve Bank of India,
Exchange Control &
D.B.O.D.Rajaji Salai,
Chennai 1.

2. The Chief Manager,
Andhra Bank,
Anna Nagar Branch,
2nd Avenue, Anna Nagar,
Chennai 40.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India for the issuance of a writ of Mandamus, directing 2nd respondent to pay 33125 US dollors with interest 24% at quarterly rest from the date of the each bill by equivalent of Indian currency Rs.43/- per dollar making total value Rs.35 lakhs with costs.

For Petitioner : Party in person
For Respondents : M/s.C.Mohan for R1
King & Patridge
M/s.C.Hanumantha Rao for R2

O R D E R

The writ petition is filed for a direction against the second respondent to pay US$33125 with interest of 24% at quarterly rest from the date of each bill by equivalent of Indian currency Rs.43 per dollar making a total value of 35 Lakhs with costs.

2. The case of the petitioner is that the petitioner is having a current account at the second respondent Bank, which is an authorised dealer to deal with foreign exchange having head office at Hyderabad. The petitioner who is doing export business,

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has submitted four shipping documents for export of Onions to Malaysia in four bills.

1. 15,000 U.S.dollars
2. 7,500 U.S.dollars
3. 3,625 U.S.dollars
4. 7,000 U.S.dollars

making a total 33,125 U.S.dollars. The bills of exchange were drawn on document against the payment terms and pursuant to that, the goods were shipped through the authorized bank with instruction to collect the payment from the buyer in foreign countries and deliver goods to the buyers. The shipping company delivers goods to the buyers against indemnity for payment to bank and according to the petitioner all the five containers have been delivered to the buyers. According to the petitioner, the second respondent has endorsed the documents to their correspondent banks with instructions to collect payment from the buyers and to deliver the goods to them and if the buyers failed to pay the money, the goods must be protected and alternative arrangement of sale must be made. According to the petitioner, the second respondent has not taken steps to collect or demand the payment and colluded with buyers and the shipping companies, since the second respondent has not enforced the indemnity against the shipping company. With the result the amounts have not been paid. However the goods have been delivered. According to the petitioner, the conduct of the second respondent in not protecting the goods and making delivery without collecting payment is unlawful. According to the petitioner, this is against the Foreign Exchange Regulation Act and rules. Therefore, the present writ petition is filed for the relief as sought for.

3. On the other hand, the second respondent has filed counter affidavit.

4. While admitting that the petitioner has submitted four bills for collection for the said amounts stated by the petitioner, the second respondent would submit that in respect of certain bills the petitioner's firm had given a certificate that the goods despatched by them have been taken by the buyers against the letter of indemnity. It was based on the said certificate issued by the firm belonging to the petitioner that the foreign bank acting on behalf of the second respondent, has demanded money from the buyers and the same was not honored. The said documents were returned to the second respondent. Immediately thereafter, the second respondent has informed the same to the petitioner on 14.07.1995 to which the firm of the petitioner has replied on 18.07.1995 stating that the amounts will be realized shortly and thereafter the said M/s.Rayulu and Company has never took steps to regularize the said bills, it was long thereafter namely on

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18.01.1998 the petitioner by a written letter called on the second respondent to pay 22,500 U.S.dollars towards interest to which the second respondent has replied on 20.01.1998 stating that since proceeds are not forth coming, the second respondent has no other option to inform the Enforcement Director to take suitable action for repatriation of foreign exchange involved in the export outstanding bills of the petitioner.

5. It is also the specific case of the second respondent in the counter affidavit that the petitioner has made arrangements to deliver goods directly to the buyers even before the relevant documents were submitted to the second respondent for collection and that is evident from the beneficiary certificate issued by the petitioner in which the petitioner himself has stated as follows:

> "Cargo invoice number 76 dated 25.02.1995 has been taken delivery by the buyer against the letter of indemnity and then only to honour bills."

6. Therefore, the second respondent was never called upon to deliver goods to the buyers. The duty of the second respondent was only to collect the sale proceeds from the buyers through their corresponding foreign bank. Therefore, according to the second respondent, there was no violation of any statutory provisions.

7. The petitioner has appeared party in person. His submission is mainly that it was as against the four bills which was submitted to the second respondent, the goods were delivered and it was the responsibility of the second respondent bank to see that the goods are not despatched to the buyers till the amounts are paid and also the second respondent had an obligation to obtain indemnity from the shipping company. In the present case, according to the petitioner, his goods worth so much of value has been sent only on the faith that the second respondent will collect the amount and inasmuch as the respondent has failed to collect the amount but at the same time delivered the goods resulted in the damages to the petitioner. The petitioner on the other hand would submit that either he should be paid with the money or the goods should have been returned to him at the appropriate time. According to the petitioner it is only the negligence on the part of the second respondent which is in violation of the Foreign Exchange Act. The petitioner would submit that inasmuch as there is a violation, he cannot be directed to go to Civil Court. The conduct of the second respondent in writing a letter on 14.07.1995 to the petitioner stating that the petitioner should have ensured advance payment is unbecoming of banking activity according to the petitioner.

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8. On the other hand M/s.C.Anumantha Rao appearing for the second respondent and Mr.C.Mohan appearing for M/s.King & Patridge for the first respondent would rely upon the letter of the second respondent dated 14.07.1995 addressed to the petitioner stating that the said four bills have been returned unpaid and the payments are not forth coming from drawee, the items being perishable in nature the petitioner should have ensured advance payment. It is to this letter, the petitioner has replied on 18.07.1995 stating that the petitioner is claiming entire amount from the shipping company and releasing the foreign exchange amount shortly. Therefore, according to the learned counsel for the respondents, the conduct of the petitioner itself clearly shows that his contact with the purchasers in the foreign countries was such that at no point of time the respondents were involved in the concept of sale as such. Learned counsel for the respondents also rely upon the letter of the Reserve Bank of India Exchange Control Department, Chennai, dated 24.09.1998 wherein the first respondent has informed the petitioner directing him to prefer a complaint against the overseas buyers with the Indian Embassy / High Commission in the Malaysia or to seek legal reports for recovery of export proceeds. Therefore, even assuming that the foreign buyers have not honoured the bill having taken delivery, it is only for the petitioner to proceed against them based on the bills. The learned counsel also would submit that this is being purely contractually in nature, the writ petition under article 226 of the Constitution of the India does not arise. The relief in the writ petition is in the form of a prayer for payment of money and therefore the learned counsel by placing reliance upon the various judgments of the Hon'ble Supreme Court including 2001 S.C.C.549, 2000 AIR SCW 5715, 2004(9) SCC 786, 2003 (7)SCC 410, 2003(10)SCC 261, to substantiate the contention that for recovery of money, filing of writ under Article 226 is not a remedy.

9. The learned counsel also would rely upon the judgment of the Hon'ble Supreme Court reported in 1999(8) SCC 357 for the proposition that even assuming that there is a delay in payment based on the bank guarantee that will not amount to deficiency in service.

10. I have heard the submissions made by the party in person who is the petitioner and also the learned counsel appearing for the respondents.

11. A reference to the prayer in the writ petition shows that it is for the recovery of money due regarding the goods transferred by the petitioner as against the bill of exchange

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drawn, the present writ petition is filed. The question involved in the present case is one of factual in the sense as to whether the second respondent is negligent or what is the contractual relationship between the petitioner and the second respondent and under what circumstances the second respondent was expected to deal with the foreign counter part bank and in the event of the overseas buyer failing to pay the money what is the legal course to be taken. All these things are factual matters which require evidence.

12. That apart the prayer in the writ petition for recovery of money even assuming for a moment that there is a fault on the part of the second respondent, the question that is to be considered in the present case is as to whether such a right can be exercised by filing a writ petition under Article 226 of the Constitution of India.

13. Simply because the valuable property right of the petitioner is lost under a contractual obligation either by the conduct of the second respondent or by the overseas purchasers, and due to the reason that such export to foreign countries involved in foreign exchange it cannot be said that the writ petition is maintainable. There is absolutely no extraordinary situation in this case. The entire facts and circumstances as narrated in the affidavit filed by the petitioner itself show that these are purely civil and contractual transactions and it can never be said that the relationship between the petitioner and the second respondent or for that matter to the first respondent is that of "State" under Article 12 of the Constitution of India and therefore by no strentch of imagination, it can be said that the writ petition is maintainable. As pointed out by the respondents, the Hon'ble Supreme Court had occasion in hierarchy of cases and the law has been well settled holding that in respect of contractual matters Article 226 of the Constitution of India filing writ mandamus cannot be remedy. In this regard, it is relevant to point out the observation of the Supreme Court in Uttra Pradesh Pollution Control Board and others Vs. Kanoria Industrial Ltd., and another reported in 2001(2) SCC 549.

14. Even though in that case the Supreme Court has directed the refund of the amount paid, has categorically held that

> "in exercise of writ jurisdiction facts and circumstance of each case are to be kept in mind and ascertaining whether there have been latches on the part of the parties seeking in due time or not."

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15. In the judgment rendered by the Hon'ble Supreme Court in Orissa Agro Industries Corporation Ltd., and others Vs. Bharati Industries and Others reported in 2005 AIR SCW 5715 in a similar case as that of the present case wherein a money claim arose on the basis of breach of contract and inspite of that the High Court has entertained the writ petition, the Hon'ble Supreme Court while setting aside the judgment has held as follows:-

> "Whether or not the High Court should exercise jurisdiction under Article 226 of the Constitution would largely depend upon the nature of dispute and if the dispute cannot be resolved without going into the factual controversy, the High Court should not entertain the writ petition."

16. In yet another judgment of the Hon'ble Apex Court rendered in National Textile Corporation Ltd., and others Vs. Haribox Swalram and others reported in 2004 (9) SCC 786. While deciding about the scope of writ petition and issue of mandamus under Article 226 of the Constitution of India, the Hon'ble Apex Court has held as follows:-

> "That apart, the prayer made in the writ petition is for issuance of a writ of mandamus directing the appellant herein to supply the goods (cloth). It is well settled that in order that a mandamus be issued to compel the authorities to do something, it must be shown that there is a statue which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance. The present is a case of pure and simple business contract. The writ petitioners have no statutory right nor is any statutory duty cast upon the appellants whose performance may be legally enforced. No writ of mandamus can, therefore, be issued as prayed by the writ petitioners."

17. In a similar situation the Apex Court while dealing in Orisa State Financial Corporation Vs. Narsingh CH. Nayak and others reported in 2003(10) SCC 261 has laid down law regarding the writ jurisdiction under Article 226 of the Constitution of India in the following words:-

> "No doubt, while exercising its extraordinary jurisdiction under Article 226 of the Constitution, the High Court has wide power to pass appropriate orders and issue proper directions as necessary in the facts and circumstances of the case and in the interest of justice. But that is not to say that the High Court can ignore the scope of the writ petition and nature of the

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dispute and enter the field pertaining to contractual obligations between the parties and issue such directions annulling the existing contract and introducing a fresh contract in its place."

18. As I have narrated about the facts of this case, the prayer itself is simply for recovery of money on a breach of contract and the second respondent happens to be a bank it does not mean that for the breach of contract or for non performance of a contractual obligation, Article 226 can be invoked by filing a writ petition. That apart, as I have stated earlier the entire matter relates to the factual assertion of various circumstances and that cannot be decided in the writ petition on filing affidavits. It is always open to the petitioner to seek his remedy in the appropriate forum.

In view of the same, the writ petition fails and the same is dismissed. No Costs. Consequently, connected W.P.M.Ps.are closed.

nbj

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To

1. The General Manager,
   Reserve Bank of India,
   Exchange Control &
   D.B.O.D.Rajaji Salai,
   Chennai 1.

2. The Chief Manager,
   Andhra Bank,
   Anna Nagar Branch,
   2nd Avenue, Anna Nagar,
   Chennai 40.

+ one cc to M/s. King and Patridge, Advocate sr no. 44942

VC(CO)
NM(26.09.2006)

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